

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VIRGILLIO VIRGO	:	MISCELLANEOUS ACTION
	:	
v.	:	
	:	No. 08-184
GREG SMITH, et al.	:	

**ORDER-MEMORANDUM**

AND NOW, this 23<sup>rd</sup> day of October, 2008, plaintiff's pro se complaint, styled  
"Motions for Due-Process," is dismissed without prejudice, 29 U.S.C. § 1915(e)(2)(B).<sup>1</sup>

The complaint, in its entirety, states:

- 1) And now comes pro-se petitioner I Virgillio Virgo was violated due-process by not allowing complainant use communications devices to communicate for either finincal [sic] or legal purposes
  - 2) Harassment by incompetence assault slander libel by Doctor Thomas unit 2 west.
- All are true and correct and will sodom penalthole [sic] by I.M.

Attached to the pleading is a September 18, 2008 letter addressed to plaintiff from the Department of Veterans Affairs, Debt Management Center, advising plaintiff that the Department "will withhold \$117.00 each month from your compensation benefits to apply to your indebtedness of \$3,275.42."

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<sup>1</sup> "Under § 1915(e)(2)(B), a court may dismiss a case 'at any time' if it determines an action or appeal (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An action or appeal can be frivolous for either legal or factual reasons." Tittler v. Klem, 2002 WL 31993975 (3d Cir., Dec. 9, 2002), citing Neitzke v. Williams, 490 U.S. 319, 325 (1989). "The frivolous standard . . . requires that a court also assess an in forma pauperis complaint from an objective standpoint in order to determine whether the claim is based on an indisputably meritless legal theory or clearly baseless factual contention." Deutsch v. United States, 67 F.3d 1080, 1086 (3d Cir. 1995)

The complaint, read liberally,<sup>2</sup> does not contain sufficient facts to state a claim upon which relief may be granted. It does not describe a basis for federal jurisdiction. The complaint, therefor, is frivolous,<sup>3</sup> and must be dismissed without prejudice. Plaintiff is granted until Friday, November 14, 2008 within which to file an amended pleading, if he can do so within the strictures of Rule 11 of the Federal Rules of Civil Procedure. The pleading must clearly set forth a basis for the exercise of federal jurisdiction and must include facts sufficient to satisfy the pleading standard of the applicable Rules of Civil Procedure.

BY THE COURT:

/s/ Edmund V. Ludwig  
Edmund V. Ludwig, J.

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<sup>2</sup> Plaintiff's pro se pleading must be construed liberally. Rewolinski v. Morgan, 896 F. Supp. 879, 880 (E.D. Wis. 1995), citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

<sup>3</sup> "A claim is frivolous if it lacks an arguable basis in fact or in law." Perkins v. New Jersey Dep't of Labor, 154 F.R.D. 132, 133-34 (E.D. Pa. 1994) (citations omitted).